THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.8781 of 2005

22.8.2005

Between

Ch.Venkata Kishtaiah, S/o.Late Ch.Venkata Subbaiah,

Patur village, Kovur Mandal, Nellore District.

… Petitioner

AND

1. The Government of A.P., rep. By its Secretary, Endowments Department, Secretariat Buildings, Hyderabad.

and others

… Respondents

ORDER:

The petitioner claims to be the lessee of agricultural land admeasuring Acs.1.85 in Survey No.298 of Patur village of Kovur Mandal in Nellore District. The land belongs to Sri Veereswara Swamy Temple, the 5th respondent herein. The petitioner earlier filed a writ petition being W.P.No.12329 of 2004 before this Court praying for a Writ of Mandamus declaring the action of the respondents in ordering the petitioner orally to vacate the land as illegal, arbitrary and contrary to the provisions of A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (the Act, for brevity). By order dated 16.7.2004, this Court disposed of the writ petition giving liberty to the petitioner to make an application before the Assistant Commissioner of Endowments, Nellore seeking appropriate declaration under Section 82 of the Act. Accordingly, the petitioner filed an application before the Assistant Commissioner of Endowments under Rule 3 of A.P. Charitable and Hindu Religious Institutions & Endowments Lease of Agricultural Lands Rules, 2003 (the Rules, for brevity). The Assistant Commissioner by proceedings dated 29.10.2004 rejected the claim of the petitioner *inter alia* on the ground that the petitioner was not a landless poor person, as he was having an extent of Acs.2.61½ of wetland in addition to Acs.1.85 of temple land, which is under his occupation. Aggrieved by the same, he preferred an appeal under Rule 4 of the Rules. The third respondent, the designated appellate authority, by proceedings dated 24.3.2005 dismissed the appeal finding no reason to interfere with the orders of the Assistant Commissioner. The order of the third respondent is impeached in the writ petition.

The third respondent as well as the Chairman of the Trust Board, the fifth respondent

temple filed counter affidavits. The fifth respondent, in the counter affidavit, stated that the father of the petitioner was in illegal occupation of the land and was paying the meager maktha of 0.18.0 Thooms (42 Kg = 1 Thoom) of paddy per annum, that the petitioner's father filed a suit and in view of the same, for the intervention of the village elders, the land was given on lease for annual maktha of 24 Thooms. However, when he did not pay the maktha, a report was submitted by the Assistant Commissioner of Endowments and therefore, there is no valid lease in favour of the petitioner of his father. After the death of his father, the petitioner succeeded to tenancy in 1984 and was paying maktha of 18 Thooms. The petitioner was having an extent of Acs.2.61½ of wetland and therefore, he is not entitled to any benefits under Section 82 of the Act.

The counter affidavit filed by the third respondent is almost on similar lines. It is further stated in the said counter affidavit that a notice was issued by the Assistant Commissioner to the petitioner as well as Chairman of the fifth respondent temple. During the enquiry, the petitioner engaged Sri V.Madhava Rao, an Advocate, who filed vakalat but, on the date of the enquiry, he did not attend. Accordingly, the application of the petitioner was rejected. The Assistant Commissioner followed the procedure under law. The counter affidavit filed by the third respondent also discloses that in the appeal preferred by the petitioner, instead of pursuing the appeal, the petitioner filed W.P.No.21143 of 2004. The same was disposed of with a direction to the Regional Joint Commissioner of Endowments, the third respondent herein, to dispose of the appeal, within eight weeks from the date of receipt of a copy of the said order. The third respondent issued notice dated 29.12.2004 to the learned Advocate for the appellant as well as the temple authorities. The allegations that the petitioner was waiting for notice of the third respondent and that a notice was not issued are denied. As the petitioner or his Advocate did not appear, the order was passed based on the material on record.

The learned Counsel for the petitioner raised two grounds. First, he would submit that the Assistant Commissioner of Endowments did not conduct enquiry, as it requires under law, to pass the order after duly examining the petitioner and that the order of the Regional Joint Commissioner of Endowments is bad for non-issuance of notice. These contentions are refuted by the learned Assistant Government Pleader for Endowments as well as the learned Counsel for fifth respondent temple. As regards the dispute regarding non-issuance of notice by the appellate authority, this Court directed the learned Assistant Government Pleader to produce the relevant file. Accordingly, the file has been produced before this Court. The same discloses that the Regional Joint Commissioner of Endowments has issued a notice to the Assistant Commissioner of Endowments, the Chairman of the fifth Respondent as well as Sri Madhava Rao, Advocate for the petitioner. Therefore, in spite of the affidavit filed by Sri Madhava Rao, the allegation that no notice was received cannot be accepted.

Insofar as the other question is concerned, the order of the Assistant Commissioner was challenged in the appeal under Rule 4 of the Rules and the third Respondent passed the order in the appeal. Therefore, it is not permissible for the petitioner to again challenge the order of the Assistant Commissioner, the original authority.

Further, a perusal of the order of the Assistant Commissioner would show that the petitioner does not come within the definition of landless poor person, as he also owns Acs.2.61½ of wetland in addition to Acs.1.85 of temple land, which is under his occupation.

The writ petition is devoid of merits and is, accordingly, dismissed.

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(**V.V.S. RAO,J**)

August 22, 2005

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